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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,305	07/03/2003	Hirobumi Toyoda	3022-0012	3187

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ALFRED A. STADNICKI  
1300 NORTH SEVENTEENTH STREET  
SUITE 1800  
ARLINGTON, VA 22209

EXAMINER
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HARPER, TRAMAR YONG

ART UNIT	PAPER NUMBER
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3714

NOTIFICATION DATE	DELIVERY MODE
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03/27/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

AStadnicki@antonelli.com  
alfred.a.stadnicki@gmail.com  
dprater@antonelli.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/612,305	<b>Applicant(s)</b> TOYODA, HIROBUMI	
	<b>Examiner</b> TRAMAR HARPER	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Examiner acknowledges receipt of amendments/arguments filed 10/25/07. The arguments set forth are addressed herein below. Claims 1-20 remain pending, Claims 1-9 have been amended, and Claims 10-20 are newly added.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 5, and 8 are rejected under 35 U.S.C. 101 because it is unclear as to the statutory subject matter being claimed. The claims refer to an apparatus (machine) with functional steps (process). It is unclear as to whether the method or apparatus is being claimed. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 5, and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to whether the claims refer to an apparatus or methods. If the claims are intended to be apparatus applicant is advised to put example language such as a processor "configured to" or "programmed to" implement the functional language. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-5 and 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeKeller (US 2003/0017867) in view of Luciano (US 6,368,214).**

**Claims 1-2, 5, 9-10, 12-14:** DeKeller discloses a gaming machine including a computer processor with memory and a means for a player to input wagers (coins, etc). The gaming machine comprises of a Keno or Lottery-type game, wherein a player is randomly selected or dealt a set of numbers or cards via processor/dealer and a random set of outcome numbers or cards are drawn. If the player has a match than the player is awarded a payout based on a disbursement number and a coin-in/credit amount. However, the player can opt to increase the bet and have a second set of cards randomly drawn and the player is awarded based on a changed disbursement number and the total bet number. The final award is based on a final match between the player's numbers and the total sets of outcome numbers drawn. The awards are based on winning combinations ranging from 1 out 6 card matches to 6 out of 6 card matches, wherein 6 out 6 matches is a higher rank. DeKeller discloses that if a player after a first set of random outcome cards/numbers are drawn has a 2 match combination, thereafter increases the bet, and after a second set of outcome numbers

are drawn the player now has a 4 match combination between both drawn sets than the player is awarded the new disbursement number times the total bet in amount.

DeKeller discloses that the game machine or system can comprise of interlinking game terminals with progressive jackpots. DeKeller, also, discloses that the pay table includes winning number combinations that can be based on cards matched in sequence and other variations. As a player continues to increase a wager the payouts change, requiring the player to have some type of skill or strategy in order to obtain the maximum payout possible. Each time a player increases the bet, the previous payout odds are unavailable and the player risks losing a potential award. The player has the opportunity to cash-out/drop out after each draw or increase the bet. DeKeller discloses that game machine can be played for a predetermined number of rounds, preferably three rounds. Such a gaming system provides a game for more player interaction during play, increases a player's potential chances of winning, and encourages a player to wager additional wagers. Furthermore, the casino or administrator may reduce the vigourish providing higher and/or more frequent payouts to players as well as receive higher revenues for the game by adjusting the pay schedule (Abstract, Figs. 1-4, ¶ 11, 13, 23-32, 51-56).

DeKeller discloses the above, but excludes explicitly updating the disbursement numbers in place. Figs. 1-4 clearly shows the disbursement number being changed or adjusted on each draw of outcome sets. However, Luciano shows a lottery-type game (poker, blackjack, solitaire, etc) or keno game wherein as balls are drawn or game events occurs the pay table updates so as to indicate the changing payouts to the

player. The player is given an opportunity to terminate or continue the game session. The player uses skill and strategy to maximize the prizes awarded or minimize losses generated by the game session based on the updates of the dynamic pay table. The updating pay table is based on offering lower prizes because the probability of obtaining matches increases as more balls are drawn (Abstract Col. 8:1-Col. 9:24, Figs. 6A-D). It would have been obvious to one of ordinary skill to have modified the gaming system of DeKeller with the dynamic pay table of Luciano to provide a more visual effect on the player. DeKeller clearly shows that the payouts change as the game progresses, but the pay table of DeKeller might appear time consuming or cumbersome to the player. Having to determine what payouts correspond to what part or segment of the game might take away from the excitement of the game. However, by adding a pay table that automatically updates as the game progresses is easier for the player to interpret what payouts are active or implemented at the current moment of the game. Thus, such a modification increases ease of use and enjoyment in the game.

**Claims 3-4 and 16:** DeKeller in view of Luciano illustrate the disbursement number for each respective combination is one of an increased number, a decreased number, and a same number compared with the corresponding number prior to updating (DeKeller-Figs 1-4, Luciano Figs. 6A-D).

**Claims 11 and 15:** DeKeller in view of Luciano discloses that the gaming machine is played a predetermined number of rounds (see above DeKeller), but excludes the gaming machine playable for a predetermined period of time. However, applicant has not disclosed that playing the game machine for a predetermine period of time provides

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an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected DeKeller in view of Luciano's gaming machine, and applicant's invention, to perform equally well with either the gaming machine played for a predetermined amount of rounds, as taught by DeKeller in view of Luciano, or the claimed predetermined period of time means because both provide the same function of allowing a player to play a set length whether respective of rounds or time, thereby allowing a player to eventually place additional bets.

Therefore, it would have been prima facie obvious to one of ordinary skill in the art to modify DeKeller in view of Luciano to obtain the invention as specified in claim 1 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of DeKeller in view of Luciano.

**Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeKeller (US 2003/0017867) in view of Luciano (US 6,368,214) in further view of Dote (US 5,221,083).**

**Claim 6:** DeKeller in view of Luciano discloses that above with respect to claim 5, but excludes particularly displaying dealer on a display. DeKeller discloses multiple gaming terminals linked together to participate in a progressive (plurality of players) and the randomly selected numbers can be randomly dealt cards from a deck of cards (see above). Dote (US 5,221,083) discloses a linked gaming system with a virtual dealer displayed to the players. The virtual dealer distributing cards make the simulated game seem more realistic (Abstract, Col. 1:27-32, Col. 2:30-54, Figs. 2-4). It would have been obvious to one of ordinary skill in the art to have modified the gaming system of

DeKeller in view of Luciano with the virtual dealer of Dote to provide a more interactive gaming environment. Such a modification, would make the dealing/selecting of the cards to the players appear more realistic.

**Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeKeller (US 2003/0017867) in view of Luciano (US 6,368,214) in further view of Luciano (US 2004/0023715).**

**Claims 7-8:** DeKeller in view of Luciano ('214), discloses the above with respect to claim 5, but excludes the game implemented via a server. DeKeller discloses that the game can comprise of a progressive system with linked terminals. However, Luciano (2004/0023715) discloses that a keno/lottery-type game system that can be played via a server linked to game terminals, wherein the software for implementing the game is within the server (¶ 32-35). Luciano discloses that providing a network with a central controlling server provides a means to network games for a progressive system. It would have been obvious to one of ordinary skill in the art to have modified the gaming system of DeKeller in view of Luciano ('214) with the central server of Luciano to provide a progressive infrastructure type gaming system. Such a modification, would allow gaming terminals to compete for a progressive jackpot.

**Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sidley (US 4,760,527) in view of DeKeller (US 2003/0017867).**

**Claims 17-20:** Sidley discloses an electronic gaming system wherein a central server maintains and runs the game. There are a plurality of player terminals linked to the server wherein the terminals displays each player's own hand and any "up" cards by the



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other players or the number of cards drawn by the other players. Each console has input devices for inputting wagers and other gaming functions. The entire hand is quantified by the central server for both high and low values and sorted from highest to lowest. When game play begins, each player receives two cards face down and a initial up card. Following each individual betting action, a second, third, and fourth card is dealt to each card with time allowed between to allow each player to call, raise, or drop. Sidley discloses that a round takes place in which either a player can either call, raise, or drop-out of the hand and has time periods for such. As players drop out, the pot amounts and each players' amounts are adjusted according to their actions. At the conclusion of a game the winning hands are displayed along with the winning amounts and the winner's are credited accordingly with the highest rank achieving the highest award based on the amount bet by the player (Abstract, Col. 15:63-66, Col. 19:47-55, Col. 22:35-Col. 23:20, Col. 24:60-Col. 25:25).

Sidley excludes particularly a dynamic pay table that updates after each bet or round increase. However, DeKeller discloses a gaming machine including a computer processor with memory and a means for a player to input wagers (coins, etc). The gaming machine comprises of a Keno or Lottery-type game, wherein a player is randomly selected or dealt a set of numbers or cards via processor/dealer and a random set of outcome numbers or cards are drawn. If the player has a match than the player is awarded a payout based on a disbursement number and a coin-in/credit amount. However, the player can opt to increase the bet and have a second set of cards randomly drawn and the player is awarded based on a changed disbursement

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number and the total bet number. The final award is based on a final match between the player's numbers and the total sets of outcome numbers drawn. The awards are based on winning combinations ranging from 1 out 6 card matches to 6 out of 6 card matches, wherein 6 out 6 matches is a higher rank. DeKeller discloses that if a player after a first set of random outcome cards/numbers are drawn has a 2 match combination, thereafter increases the bet, and after a second set of outcome numbers are drawn the player now has a 4 match combination between both drawn sets than the player is awarded the new disbursement number times the total bet in amount.

DeKeller discloses that the game machine or system can comprise of interlinking game terminals with progressive jackpots. DeKeller, also, discloses that the pay table includes winning number combinations that can be based on cards matched in sequence and other variations. As a player continues to increase a wager the payouts change, requiring the player to have some type of skill or strategy in order to obtain the maximum payout possible. Each time a player increases the bet, the previous payout odds are unavailable and the player risks losing a potential award. The player has the opportunity to cash-out/drop out after each draw or increase the bet. DeKeller discloses that game machine can be played for a predetermined number of rounds, preferably three rounds. Such a gaming system provides a game for more player interaction during play, increases a player's potential chances of winning, and encourages a player to wager additional wagers. Furthermore, the casino or administrator may reduce the vigorish providing higher and/or more frequent payouts to players as well as receive higher revenues for the game by adjusting the pay schedule (Abstract, Figs. 1-4, ¶ 11,

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13, 23-32, 51-56). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the poker system of Sidley with the changing payouts of DeKeller to provide more interactivity to the game. Such a modification provides a game for more player interaction during play by letting a player skill and strategy determine the outcome in the game, increases a player's potential chances of winning, and encourages a player to wager additional wagers. Furthermore, the casino or administrator may reduce the vigorish providing higher and/or more frequent payouts to players as well as receive higher revenues for the game by adjusting the pay schedule.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Takashima (US 4,614,342) teaches a communal card gaming machine with game terminals.**

**Tomaszewski (US 5,013,049) teaches a poker table wherein the player with the highest ranks wins the payout.**

**Schultz (US 5,294,120) teaches updating a poker payout table based on drawn cards.**

**Bridgeman (US 5,984,779) teaches updating pay tables as the game progresses.**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRAMAR HARPER whose telephone number is (571)272-6177. The examiner can normally be reached on 7:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TH

3/13/08

/Ronald Laneau/

Supervisory Patent Examiner, Art Unit 3714